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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,458	03/03/2005	Reinhold Oppen	ZBIP-9631US01	3831
28368 7590 12/23/2008 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				
EXAMINER SAUTHER, FLEMING				
ART UNIT		PAPER NUMBER		
3677				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,458

Applicant(s)

OPPER, REINHOLD

Examiner

Flemming Saether

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 8, 10-20, 22-27 and 37-42 is/are pending in the application.
4a) Of the above claim(s) 4, 7, 17 and 19 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 8, 10-16, 18, 20, 22-27 and 37-42 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Election/Restrictions

Claims 4, 7, 17 and 19 remain in the application as withdrawn.

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the polygonal cross-section as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 8, 10-16, 18, 20, 22-27 and 37-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each of claims 1 and 2, there is no antecedent basis for "the diameter, or mean diameter". Additionally, in reference to claims 10, 13, 22 and 25, "the diameter, or mean diameter" implies a circular configuration which would contradict the "pyramidal" and "polygonal" shapes. In regards to claims 8 and 20, the "fraction of the diameter" is a double inclusion because the 2.5% to 5% included in the independent claims already includes the "fraction of the diameter". In claim 37, line 7-8, it is unclear how the projection extends from the punch edge because the foot is on the mandrel while the punch edge is on a separate shank; it appears that "from" should be --beyond-- and --in the axial direction-- inserted after "edge". In claim 37, line 9 it is unclear how the edge forms an angle; applicant should consider wording as in claims 12 and 24. The claims were examined as best understood.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8, 11, 15, 16, 18, 23 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Colley (US 2,588,907). Colley discloses a fastening element comprising a hollow shank (10) with a head (11) and an opposite threaded free end and; a mandrel (14) having a foot end with threads which are engaged with the threads of the sleeve and an opposite head end. The shank includes a punch edge formed at the intersection of a free end face and an outer peripheral surface and, foot end of the mandrel is shown to projection which extends beyond the punch edge. While it appears that the projection is shown to extend beyond the edge a height of 2.5% to 5% of the edge diameter it would alternatively have been obvious to extend the projection within the claimed range because the height is simply a function of how far the mandrel is screwed into the sleeve and it would have been obvious to screw the mandrel at different heights because it is not critical to the operation of the device. The fastening element being used as a punch is an intended of which Colley would be capable of. The shank is open ended, there is shown a smooth transition between the projection and the punch edge and, the shaping of the shank and mandrel provides then at least hardening.

Claims 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colley as applied to claims 1 and 2 above, and further in view of Shackelford (US 3,304,830). Shackelford discloses a fastening element similar to Colley but, in Shackelford the element is disclosed to have a substantially polygonal cross-section. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to make the element of Colley in a polygonal cross-sectional shape as disclosed in Shackelford because the polygonal shape would prevent the relative rotation of the element.

Claims 14 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colley as applied to claims 1 and 2 above, and further in view of Renner (US 5,403,135). Renner discloses a fastening element similar to Colley but, Renner further discloses the element to include a widened mandrel head (13). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to make the element of Colley with a widened mandrel head as disclosed in Renner in order to allow the mandrel to be easily actuated and also to facilitate the mandrel being used as a fastener.

Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colley as applied to claims 1 and 2 above, and further in view of Hathorn (US 2,195,029). Colley discloses the projection at the foot of the mandrel having a rounded

shape but does not disclose a conical or pyramidal shape. Hathorn discloses a mandrel (17) having a foot with a projection and teaches the equivalence of a rounded projection (Fig. 4) and a conical projection (Fig. 6). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to replace the rounded projection in Colley with a conical projection as taught in Hathorn.

Allowable Subject Matter

Claims 12 and 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 37-42 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Remarks

Applicant's remarks have been considered and the examiner is in general agreement with applicant's arguments. However, a new rejection has been set forth making the arguments moot.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Flemming Saether
Primary Examiner
Art Unit 3677

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